

## The State of South Carolina



## Office of the Attorney General

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January 14, 1987

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Gentlemen:

By your letter of December 18, 1986, forwarded to this Office by the Honorable George H. Bailey on December 31, 1986, you have asked that this Office address the following questions with reference to Act No. 536 of 1986:

1. Can the Dorchester County Board of Education send the United States Department of Justice a list of the four board members from District One and the three board members from District Three whom the Board of Education proposes to appoint to the Executive Committee before Act No. 536 is actually approved pursuant to the Voting Rights Act?
2. What standards or qualifications, if any, does the Department of Justice and/or federal law require that the Districts utilize in making their selections?

We regret any confusion which may have resulted from earlier letters on this subject and offer the following advice on the questions you have raised.

At the outset, it should be noted that Act No. 536 of 1986 provides for a specific official act by the Dorchester County Board of Education, that is, appointment of the Executive Committee of the new district upon preclearance by the Justice Department. However, it must of course be remembered that, as a matter of federal law (which is supreme in this area), until the Justice Department gives its preclearance, Act No. 536 or any of its requirements can have no effect. N.A.A.C.P. v. Hampton County, \_\_\_\_ U.S. \_\_\_\_, 105 S.Ct. 1128, 84 L.Ed.2d 124 (1985). Thus,

Mr. Bell  
Mr. Childs  
Page 2  
January 14, 1987

our letter of September 23, 1986 simply tracked the language of the Act since preclearance of the Act by the Justice Department had not been given. In providing the September 23 letter to Representative Bailey which merely tracked the language of the statute, we did not intend to prevent the County Board from answering the Justice Department's inquiries as to who might ultimately be appointed to the Executive Committee, so that the preclearance process might proceed. Nor did our September 23 letter intend to prevent any other inquiry by the Justice Department in this matter.

Our subsequent correspondence on the matter stresses this fully. In our letter of September 29, 1986 to the Civil Rights Division of the Department of Justice, we stated that "if information on the informal appointment of the Executive Committee will allow the Justice Department to make a determination, this Office would not object to the County Board providing such." Our letter of October 3 reiterates this point by stating that "this Office certainly has no objection to the Justice Department's obtaining from local officials the information necessary, whatever that information may be, in order to make a proper determination regarding Act No. 536."

In our opinion, Act No. 536 does not prohibit the Dorchester County Board of Education from providing any information to the Department of Justice. Furthermore, this Office certainly has no objection to your providing such information.

With respect to your second question concerning standards or qualifications for appointment, we are unaware of any formally promulgated standards or qualifications. Obviously, the thrust of the Voting Rights Act is to prevent the erosion of the voting rights of minorities. In its letter to this Office dated December 1, 1986, the Department of Justice specifically pointed out that the popularly elected Board of Trustees of Dorchester County School District Three consists of six black members. The letter also specifically states that the reason the state law has not been precleared is that assurances that the racial composition of the board will substantially reflect the racial composition of the new district have not been forthcoming. Undoubtedly, any information which you may be able to provide to the Department of Justice on the issue will be of assistance in securing approval of this statute.

With kindest regards, I am

Sincerely,



Robert D. Cook  
Executive Assistant for Opinions

RDC/rhm  
cc: The Honorable George H. Bailey